CHONG SIM

v.

MENTERI DALAM NEGERI & 3 ORS.

HIGH COURT MALAYA, ALOR SETAR
TUAN MOHD. HISHAMUDIN BIN HJ. MOHD YUNUS J
[ORIGINATING SUMMONS NO. 24-292-95]
15 JUNE 1995

ADMINISTRATIVE LAW: *Restricted residence order - Restricted Residence Act 1933 - Endorsement on reverse side of order - Part of endorsement handwritten - Whether handwritten endorsement additions - Whether order rendered defective.*

ADMINISTRATIVE LAW: *Restricted residence order - Typewritten words on order - Whether typewritten words require Minister's initial - Whether words additions.*

A restricted residence order was issued against the plaintiff by the Minister of Home Affairs. At various points of the order were dotted lines with typewritten words inserted and the reverse side of the order was endorsed by the Penguasa Penjara, whereby a part of the endorsement was handwritten. The plaintiff prayed for a declaration that the order was null and void and submitted that the handwritten words were additions and that in law, the said words must be presumed to have been made after the date the endorsement had been signed by the Penguasa Penjara. Such additions, according to the plaintiff, had rendered the Minister's order defective.

Held:

[1] The fact that the words were handwritten does not, by itself, justify the Court to infer that the words were additions, let alone unauthorised additions made after the signing of the endorsement. Ideally, those words should not have been in a handwritten form but the fact that those words were handwritten only goes to show shoddy works on the part of the authority concerned. Strictly from the legal standpoint, there is nothing wrong for the words to be handwritten. Furthermore, endorsement on the reverse side of the order is not part of the restriction order and is purely administrative in nature.

[2] To assert the typewritten words as additions is far-fetched. They are necessary details without which the order would not make sense. It is ridiculous to suggest that the Minister initials every particular that is inserted in the form.

[Application dismissed with costs]

Legislation referred to:
Restricted Residence Act, 1933, ss. 2(ii), 2A, 3(i)

For the plaintiff - Darshan Singh; M/s. Darshan & Co.
For the defendants - Muhamad Abazabree bin Abbas, Federal Counsel

JUDGMENT

Mohd. Hishamudin bin Mohd. Yunus J:

The plaintiff prays for a declaration that the restricted residence order issued by the Minister of Home Affairs against him under the Restricted Residence Act 1993 be declared null and void. Various grounds are set out in his affidavit, but in the oral and written submissions, his Counsel submitted only three grounds.

First, learned Counsel pointed out that the following handwritten words had been added to the endorsement of the Penguasa Penjara on the reverse side of Borang C (perintah di bawah s. 2 (ii)):

> Saya Abd. Aziz b. Abd. Razak Penguasa Penjara adalah dengan ini memberitahu bahawa pada 26 haribulan Januari 1995 kandungan perintah ini telah dibacakan kepada Chong Sim KP: 470225-10-5361 orang yang dinamakan di sini dan ia mengaku bahawa ia memahami sepenuhnya syarat yang dikenakan ke atasnya. Saya juga memperakui bahawa saya telah menyampaikan satu salinan perintah ini kepadanya. Saya juga telah meminta penama untuk memaklumkan tempat beliau ingin tinggal semasa berada di tempat sekatan. Penama tidak dapat memberi maklumat sedemikian. Tempat penama akan tinggal *menyewa sebuah rumah di Mukim Kupang Daerah Baling.*
>
> Tarikh 26 Januari 1995
>
> t.t.
> (Abd. Aziz bin Abd. Razak)
> Penguasa Kanan Penjara
> b.p. Pengarah Penjara
> Penjara Pudu
> Kuala Lumpur

[The words in italic are in handwritten form].

Learned Counsel submitted that these words ("menyewa sebuah rumah di Mukim Kupang Daerah Baling"), written with a pen (and not typewritten or in print), were additions and, in law, must be presumed to have been made after the date the endorsement had been signed by the Penguasa Penjara. It was submitted by Counsel that such addition rendered the Minister's order defective.

Learned Federal Counsel, on behalf of the respondents, on the other hand, protested that he was caught by surprise by this line of argument; for there was nothing in the plaintiff's affidavit alleging any addition to the Penguasa's endorsement or that he was suspicious of the words written in ink (or pen). He further argued that, in any event, the endorsement by the Penguasa is administrative in nature and such endorsement is not part of the order. With respect I am unable to accept the plaintiff's contention. In the first place, as submitted by the learned Federal Counsel, there is nothing in the plaintiff's affidavit that alleges that there had been additions made to the endorsement subsequent to the signature of the Penguasa. The onus is on the plaintiff to show by affidavit evidence that those words were in handwritten form were additions. In my view, the fact that the words were handwritten does not, by itself, justify the Court to infer or assume that the words were additions, let alone unauthorised additions made after the signing of the endorsement. The plaintiff should make a clear allegation of tampering or unauthorised additions in his affidavit so that the appropriate authority would have the opportunity to reply to the allegation. Supposing an allegation had been made in the plaintiff's affidavit, then, and only then, is there an evidential burden on the part of the defendants to explain how those words came to be handwritten. Of course, ideally, those words should not have been in a handwritten form; it should have been typewritten or printed; and the fact that those words were handwritten only goes to show shoddy works on the part of the authority concerned. But strictly, from the legal standpoint - at least as far as the endorsement alone is concerned - to my mind, there is nothing wrong for the words to be handwritten.

Plaintiff's Counsel, however, argued that there was in fact a specific allegation in the plaintiff's affidavit concerning the handwritten words and he referred to para. 2 of the affidavit which states:

2. Responden-responden gagal untuk menyerahkan kepada saya Perintah Kediaman Terhad yang ditandatangani. Saya kembarkan satu salinan perintah yang ditanda sebagai Eksibit C1.

With respect, clearly this paragraph does not speak of the matter complained of. The complaint contained in the above paragraph is totally of a different nature. It gives the impression that there had been a failure on the part of the authority to serve the restriction order on the plaintiff. But this is not what the plaintiff is complaining of in his argument. Now, in Court the plaintiff is not complaining that he had not been served with the order; nor is he complaining that the order had not been duly signed by the Minister. His complaint in Court concerns the handwritten words in the endorsement of the Penguasa Penjara. In other words, the above paragraph is misleading. Now, on this I must say that it is highly improper for the plaintiff to file an affidavit that misleads the Court. The plaintiff should have been forthright in his affidavit. The plaintiff is reminded here that the power whether or not to grant a declaration is purely discretionary, and, in my opinion, the Court in deciding whether or not to grant must take into account the whole circumstances of the case, including the conduct of the applicant; in my view, the Court ought to refuse to grant a declaration where the application, as exemplified by the present case, reveals some unmeritorous conduct on the part of the applicant.

Secondly, I accept the learned Federal Counsel's submission that the endorsement, written on the reverse side of the order, is not part of the restriction order and is purely administrative in nature. It was made, not because the Act requires such an endorsement to be made, but merely to show that the steps had been taken to comply with s. 3(i) of the Act which states:

Person affected to be informed of order

3. (i) When any such order as is referred to in s. 2 (ii) or s. 2A has been made with reference to any person, he shall be taken before the officer in charge of the prison in which he is detained and the officer in charge shall inform him of the terms of the order and shall deliver to him a copy thereof and shall require him to state the place in which, consistently with the terms of the order, he desires in the immediate future to reside.

Therefore, unlike in the case of an order, it should not be subjected to strict scrutiny by the Court.

The second point raised by learned Counsel touched on the restriction order itself and also on the police supervision order - Borang C and Borang E, respectively. It was submitted by the learned Counsel that the Minister should have initialed the typewritten words inserted on the dotted lines (i.e. filled in the blanks) in both orders. Learned Counsel argued that those typewritten words were additions. Again there is no merit at all in this submission. First, in view of the prayer which only concerns the restricted residence order under s. 2, and which does not concern the police supervision order under s. 2A, therefore, with respect, any reference inthe submissions to the police supervision order is irrelevent and would only confuse the issue. In other words, the learned Counsel for the plaintiff, in his submission, should only confine himself to the restricted residence order (Borang C). Secondly, this point (additions in Borang C and Borang E) is also not raised in the affidavit. Thirdly, with respect, it is far fetched - or perhaps even ridiculous to assert that the typewritten words in both orders were additions. To my mind they cannot be described as additions. They are in fact necessary details without which Borang C and Borang E would not make sense. It can be seen from the forms that the orders were, initially, prepared in the form of standard printed blanks forms. The necessity for standard

forms is not difficult to appreciate: for administrative convenience as well as to avoid clerical mistakes which, in view of the legal and serious nature of the orders, the Minister cannot afford to make. Whenever the Minister intends to issue an order in respect of any particular individual, all that needs to be done is for the appropriate officer, responsible for advising the Minister (who, of course has the final say), to fill in the form with the necessary particulars and thereafter to submit the completed form and his advice to the Minister for his approval and signature. It is ridiculous to suggest that the Minister initials every particular that is inserted in the form.

The third ground submitted by learned Counsel concerns the defendants' affidavits in reply. I do not propose to touch on this submission because it is devoid of any merit and, moreover, it appears to me that learned Counsel was not pursuing the point seriously.

For the reason stated above, I dismiss the application with costs.